

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LOUIS MICKENS-THOMAS,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 99-6161
	:	
	:	
DONALD VAUGHN, et al.,	:	
Defendants.	:	

**MEMORANDUM**

BUCKWALTER, J.

May 3, 2002

Respondents have asked for a stay of this court's March 19, 2002 order pending appeal. When this petition was filed and briefed initially, no mention was made in respondents' brief as to which rule of the Federal Rule of Appellate Procedure was applicable to their petition. What the respondents did cite was Hilton v. Braunskill, 481 U.S. 770, 776 (1987) for the factors the court should weigh in deciding whether to grant a stay.

Petitioner agreed that Hilton is controlling and stated that the petition is governed by Fed.R.App.P. 23(c).

The respondents in a reply brief contend that Rule 23(c) does not apply<sup>1</sup> since this court did not order petitioner released from custody. While this position may be

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1. Respondents should exercise greater care in reviewing their submissions to the court. The first paragraph of their brief is replete with errors suggesting no proofreading was done.

technically correct (petitioner makes a good argument as to why it is not), the court believes that considerations regarding the granting of a stay are the following four Hilton factors:

- (1) Whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
- (2) Whether the applicant will be irreparably injured absent a stay;
- (3) Whether the issuance of a stay will substantially injure the other parties interested in the proceeding; and
- (4) Where the public interest lies.

As to factor one, respondents make a credible argument regarding the merits of the case. But they added nothing new to make it any different from the argument which this court found unpersuasive in the past. Nevertheless, it is not devoid of merit.

Secondly, the irreparable harm as explained by applicant is that compliance with the March 19, 2002 order constitutes an admission that an *ex post facto* violation occurred and results in the abrogation of the Board's right of appeal. This, frankly, is not correct. The respondent would have done better to explain in detail its argument that "this is an issue critical to the Board with far reaching implications." Even without further explanation, I accept this is an accurate appraisal of the situation facing the board.

The third factor, whether the issuance of a stay substantially injures petitioner, does not necessarily weigh in favor of petitioner. There is certainly no guarantee that if a parole hearing were held pursuant to this court's order that petitioner would be paroled.

Finally, the public interest is presumptively, it seems to me, with the rights of the individual unless those rights are clearly subordinate to a concern that actually reflects a serious threat to public safety. In this case, the respondents have expressed concern about releasing a prisoner who they think still poses a threat to society. Whether this is a serious concern is subject to debate. Nevertheless, the Hilton test requires a balancing of the four factors and I believe in this case that balancing comes down on the side of granting the stay.

To recapitulate, the respondents have made a credible if not persuasive argument on the merits. Secondly, I believe that the ruling issued in this case has far reaching implications critical to the principal duties and responsibilities of the board, such that to not grant this stay may involve irreparable injury. Third, the petitioner has no guarantee, in any event, that he would be paroled under this court's ruling of March 19, 2002. Finally, the public interest lies in general with protecting individual's rights. But that can be trumped by a substantial concern for the public safety.

An order follows.

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**ORDER**

AND NOW, this 3<sup>rd</sup> day of May, 2002, upon consideration of the motion for stay pending appeal filed by the Pennsylvania Board of Probation and Parole (Docket No. 30), and the responses filed thereto, it is hereby ORDERED that said motion is GRANTED, and this court's order entered March 19, 2002 is hereby STAYED pending appeal.

BY THE COURT:

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RONALD L. BUCKWALTER, J.